

(28,746)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1921.

No. 791.

AMERICAN STEEL FOUNDRIES, APPELLANT,

vs.

THOMAS E. ROBERTSON, COMMISSIONER OF PATENTS,
AND SIMPLEX ELECTRIC HEATING COMPANY.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF ILLINOIS.

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1 Pleas in the District Court of the United States for the Northern District of Illinois, Eastern Division, begun and held at the United States Court Room, in the City of Chicago in said District and Division, before the Honorable George A. Carpenter, District Judge of the United States for the Northern District of Illinois, on Friday, the Sixth day of January, in the year of our Lord one thousand nine hundred and twenty-two, being one of the days of the regular December Term of said Court, begun Monday, the Nineteenth day of December, and of our Independence the 146th year.

Present: Honorable George A. Carpenter, District Judge. Robert R. Levy, U. S. Marshal, John H. R. Jamar, Clerk.

2 In the District Court of the United States, Northern District of Illinois, Eastern Division.

No. 2296.

AMERICAN STEEL FOUNDRIES, Plaintiff,

vs.

THOMAS E. ROBERTSON, Commissioner of Patents, Defendant.

Be it remembered that heretofore, to-wit: on the 24th day of June, 1921, came the above named complainant, by its solicitors, and filed its bill of complaint, as follows:

3 In the United States District Court, Northern District of Illinois, Eastern Division.

In Equity. No. —.

AMERICAN STEEL FOUNDRIES, Plaintiff,

vs.

THOMAS E. ROBERTSON, Commissioner of Patents, Defendant.

Suit to Authorize Registration of Trade-mark.

Bill of Complaint.

1. American Steel Foundries, a corporation organized and existing under the laws of the State of New Jersey, and having an office and place of business at Chicago, in the State of Illinois, brings this its bill of complaint against Thomas B. Robertson, Commissioner of Patents, a resident of Chevy Chase, County of Montgomery, State of Maryland.

2. This is a suit arising under the trade-mark laws of the United States, (Section 9 of the Act of February 20, 1905, as interpreted in *Atkins vs. Moore*, 212 U. S. 285, 29 Sup. Ct. 390), also under Section 4915 of the Revised Statutes of the United States, also under Section 24, sub-section 7, of the Judicial Code.

3. Plaintiff is the sole and exclusive owner of the trade-mark consisting of the word "Simplex" for certain parts of railway rolling stock, which said trade-mark has been used by plaintiff, or its predecessor in business, in interstate and intrastate commerce since August 1, 1897.

4. On April 6, 1909, plaintiff received from the United States Patent Office certificate No. 73,250, of registration of the name "Simplex" as a trade-mark for railway car couplings, and on May 4 2, 1911, certificate No. 81,752 of registration of the name "Simplex" as a trade-mark for railway car bolsters, as will from the printed copies forming part of said registrations, hereto annexed, more fully and at length appear. Plaintiff has, since said date of the original adoption of the name "Simplex" as a trade-mark, and more especially since June 1, 1907, applied and used said trade-mark in interstate and intrastate commerce on other goods in the same class of merchandise and same field of commercial activity, to-wit: brake riggings, brake heads, brake beams, brake shoes, brake hangers, and clasp brakes; and said trade-mark has been so used by plaintiff continuously since its adoption, as aforesaid, in commerce among the several States and with foreign nations; and said word "Simplex" has thereby acquired, in the minds of the purchasing public, such association with the articles named, and with plaintiff, as to indicate that plaintiff is the source or place of origin and the proprietor of such goods.

5. That to the best of plaintiff's knowledge and belief no person, firm, corporation, or association, other than plaintiff and its predecessor in business, has ever used, in the United States, the name "Simplex" as a trade-mark for or in connection with goods in the same class with or of the same descriptive properties as railway car couplings, railway car bolsters, brake riggings, brake heads, brake beams, brake shoes, brake hangers, and clasp brakes, or has the right to use the same in connection with such goods, either in the identical form of such name or in such near resemblance thereto as might be calculated to deceive; nor can any person, firm, association, or corporation so use the same without fraud upon the purchasing public and violation of plaintiff's rights.

5 6. The said word "Simplex" is registrable as a trade-mark under the Act of February 20, 1905, and is not such a mark as is precluded from registration by said Act.

7. On the 19th day of May, 1917, in the manner prescribed by law, plaintiff presented its application to the Patent Office, praying that a certificate of registration be issued to it for the said word as a trade-mark for brake riggings, brake heads, brake beams, brake

shoes, brake hangers, and clasp brakes; and such proceedings were had in said Office upon said application that on the 23rd day of February, 1918, said application was rejected by the Commissioner of Patents, and a certificate of registration for said trade-mark was refused plaintiff, all of which will appear more fully and at length from a copy of said application and proceedings in Court to be produced.

8. On the 29th day of March, 1918, plaintiff, pursuant to Sections 4912 and 4913 of the Revised Statutes of the United States, gave notice to the Commissioner of Patents of its appeal to the Court of Appeals of the District of Columbia from his refusal to issue a certificate of registration to the plaintiff for said trade-mark upon the application aforesaid, which said notice of appeal was in form as prescribed by law and the Rules of the Patent Office and of said Court of Appeals of the District of Columbia, in such cases made and provided.

9. After hearing plaintiff and the Commissioner of Patents, said Court of Appeals of the District of Columbia, on May 5, 1919, affirmed the decision of the Commissioner of Patents, refusing to register said trade-mark for reasons stated in its opinion per curiam, which said decision was certified to the Commissioner of Patents by the Clerk of said Court on the 26th day of May, 1919.

10. On June 20, 1919, plaintiff petitioned the Supreme Court of the United States for a writ of certiorari to review the judgment of the Court of Appeals of the District of Columbia in said case, which said petition was granted; and pursuant thereto, the Supreme Court of the United States, on October 16, 1919, notified the Court of Appeals of the District of Columbia that it was willing, for certain reasons, that the said cause and the record and proceedings therein should be certified to and removed into the Supreme Court of the United States, and did thereupon command the said Court of Appeals of the District of Columbia that it send without delay to the Supreme Court, as aforesaid, the records and proceedings in said cause, so that said Supreme Court might act thereon as of right and according to law ought to be done.

11. The record in said case, in obedience to the writ of certiorari aforesaid, was filed in the Supreme Court of the United States on October 28, 1919, as from a copy of said record in Court to be produced, will more fully and at length appear.

12. On April 11, 1921, this plaintiff (the petitioner in said writ of certiorari) and the Commissioner of Patents, having been heard by the Supreme Court of the United States, the said Court ruled that the writ of certiorari in said case, for reasons stated in the opinion of said Court, since published in Volume 41 Supreme Court Reporter at page 407, was improvidently granted, and that this cause must, for want of jurisdiction, be dismissed.

13. The said Commissioner of Patents has refused and still refuses to register plaintiff's said trade-mark and to issue to plaintiff a certificate of registration of its said trade-mark.

14. And for as much as plaintiff can have no adequate relief save by this Honorable Court, plaintiff respectfully prays as follows:

7 (a) That this Court adjudge that plaintiff is entitled, according to law, to have registered its trade-mark "simplex" for brake riggings, brake heads, brake beams, brake shoes, brake hangers, and clasp brakes, as specified in its said application for registration, and to receive a certificate of registration for its said trade-mark as specified in its said application, to be issued to the plaintiff in the name of the United States of America, under the seal of the Patent Office and signed by the Commissioner of Patents, and to have a record thereof, together with printed copies of the drawings and statement of plaintiff in its said application, kept in the books provided in the Patent Office for that purpose, said certificate to state the date on which the application for registration was received in the Patent Office, all in due form of law and as provided by statute.

(b) That a process of subpoena be issued, directed to the said Thomas E. Robertson, Commissioner of Patents, commanding him to appear and make answer to this bill of complaint and to perform and abide by such orders and decrees herein as to this Court may seem just; and

(c) That plaintiff have such other and further relief as to this Honorable Court may seem just and meet.

WILKINSON, HUXLEY, BYRON &
KNIGHT,

Solicitors for Plaintiff.

GEO. L. WILKINSON,
Of Counsel for Plaintiff.

June 18th, 1921.

Admission of Service.

The above-named defendant hereby admits service and acceptance of service on the 21st day of June, 1921, process of subpoena, and copy of bill of complaint in the above-entitled action, and consents to the jurisdiction of the Court above named to hear and determine such action as a Court of original jurisdiction.

THOMAS E. ROBERTSON,
Commissioner of Patents.

(Endorsed:) Filed Jun. 24, 1921. John H. R. Jamar, Clerk.

8½ And on, to wit, the 31st day of August, 1921, came the Defendant by his attorney and filed in the Clerk's office of said Court his certain Answer in words and figures following, to wit:

9 In the United States District Court, Northern District of Illinois, Eastern Division.

In Equity.

No. 2296.

AMERICAN STEEL FOUNDRIES, Plaintiff,

vs.

THOMAS E. ROBERTSON, Commissioner of Patents, Defendant.

Answer to the Bill of Complaint by the Commissioner of Patents.

To the Honorable the Judges of the District Court of the Northern District of Illinois, Eastern Division:

The above named defendant, in answer to the Bill of Complaint, states that he has no particular adverse interest in this case; that the Simplex Electric Heating Company is a real party in interest; and that he is informed that said company has petitioned to intervene and defend said suit.

With the expectation that the Simplex Electric Heating Company will defend this suit the Commissioner of Patents does not deem it necessary to further answer the Bill now or take any active part in the proceedings.

T. A. HOSTETLER,
*Solicitor for Thomas E. Robertson,
Commissioner of Patents, Defendant.*

U. S. Patent Office, Washington, D. C.

(Endorsed:) Filed Aug. 31, 1921. John H. R. Jamar, Clerk.

10 And on, to wit, the eighth day of September, 1921, came the Simplex Electric Heating Company by its counsel and filed in the Clerk's office of said Court its certain Petition in words and figures following, to wit:

11 In the United States District Court, Northern District of Illinois, Eastern Division.

No. 2296.

AMERICAN STEEL FOUNDRIES, Plaintiff,

VS.

THOMAS E. ROBERTSON, Commissioner of Patents, Defendant.

Suit to Authorize Registration of Trade-mark.

Petition of Simplex Electric Heating Company to Intervene and Defend.

1. Your petitioner, Simplex Electric Heating Company, respectfully represents that it is a corporation organized and existing under the laws of the State of Massachusetts, doing business at Boston and Cambridge, Massachusetts, and incorporated under its present name Simplex Electric Heating Company on July 14, 1902; that it succeeded to an extensive branch of the business of The Simplex Electrical Company, a corporation organized under the laws of the State of Massachusetts on March 16, 1895, which in turn succeeded to the business of Simplex Electrical Company, a co-partnership which began business at Boston, Massachusetts, prior to December 17, 1886.

2. That your petitioner and its predecessors in business have been continuously engaged in business and in commerce with various States of the United States and with foreign countries beginning prior to December 17, 1886 and have during this period continuously used the trademark "Simplex" upon articles manufactured and sold by them in commerce between the State of Massachusetts and other States of the United States and foreign countries, the said articles increasing in number and variety until up to the present time they are several hundred, bearing the trademark "Simplex."

12 3. That the said trademark "Simplex" was first registered to your petitioners predecessor by the United States Patent Office by certificate of registration No. 18552 issued Oct. 28, 1890 to the aforesaid Simplex Electrical Company setting forth use of the said trademark in commerce between the United States and foreign nations on electrical apparatus particularly insulated or protected conducting wire and that the use of said trademark by your petitioner and its predecessors has from time to time been extended to include a wide variety of articles numbering now over seven hundred.

4. That for many years the Court of Appeals of the District of Columbia charged by the trademark act of Feb. 20, 1905 itself with final appellate authority has uniformly, repeatedly and consistently construed Section 5 of the said Act as prohibiting the registration of the name of a firm or corporation except under conditions not existing in the case at bar. That this holding was made by the said

Court with respect to the said mark "Simplex" in view of your petitioner's corporate name in D. H. Burrell and Co. vs. Simplex Electric Heating Company, 44, Apps. D. C. 452, Simplex Electric Heating Company v. Ramey Company 46, Apps. D. C. 400; and in the case of the plaintiff herein referred to in paragraph 9 of the Bill of Complaint herein.

That in view of these and other similar decisions of the said court the Commissioner of Patents has continuously refused to register the said mark "Simplex" to others including the plaintiff herein.

That after the grant of plaintiff's petition for a writ of certiorary by the Supreme Court of the United States as set forth in paragraph 10 of the Bill of Complaint, your petitioner petitioned the said court to be allowed to appear, as the real party in interest, file a brief, and make oral argument in support of the decision of the Court of Appeals of the District of Columbia upon grounds fully set forth in the

13 a printed copy of the said petition annexed hereto and which it is prayed may be read as a part of this present petition.

That thereafter the Supreme Court of the United States granted the petition and your petitioner appeared, filed its brief and through its counsel, Mr. Nathan Heard, orally argued the case. The Commissioner of Patents represented by the attorney general of the United States took no part in the case before the Supreme Court other than to file a statement reading as follows:

"This case presents for consideration the question whether the Court of Appeals of the District of Columbia correctly interpreted section 5(b), Trade-Mark Act of February 20, 1905, in affirming the Commissioner of Patents in his refusal to register the word "Simplex" as a trade-mark for car-brake beams.

While it is the Attorney General's duty to represent the Commissioner of Patents, the Commissioner obviously needs no defense in the present case, since in making the ruling herein question- he merely followed previous decisions of the Court of Appeals by which he was bound. Moreover, no interest of the Government is directly involved and it does not appear to be incumbent upon the Attorney General to participate in a case of this character which is, in fact, a controversy between individuals both of whom are represented by able counsel.

The Attorney General, therefore, submits the case without brief or argument on behalf of the Commissioner of Patents.

Respectfully submitted,

WM. L. FRIERSON,
Solicitor General.

FRANK DAVIS, JR.,
Assistant Attorney General.

5. That your petitioner first received notice of the present cause before this court by a letter addressed to its attorneys, Messrs. Heard, Smith & Tennant, reading as follows:

Department of the Interior
United States Patent Office
Washington, D. C.

June 22, 1921.

AMERICAN STEEL FOUNDRIES

v.

THOMAS E. ROBERTSON, Commissioner of Patents.

Messrs. Heard, Smith & Tennant,
613 Old South Building,
Boston, Massachusetts.

DEAR SIRs:

In enclose herewith a carbon copy of a Bill of Complaint served upon the Commissioner of Patents by plaintiff as indicated in the bill.

14 The Patent Office will probably be neutral in the matter, but we would be pleased to have notice of such actions, if any, as you may take in the matter.

Respectfully,

T. A. HOSTELLER,
Law Examiner.

That for the reasons hereinbefore set forth and in the printed petition to the Supreme Court of the United States annexed hereto it appears that there is no one before this Court actively interested in opposing the contentions of the plaintiffs or in contesting the present cause in which your petitioner is directly and vitally interested. If this Court assumes jurisdiction of this cause the right of your petitioner to protection of its trademark and its corporate name afforded by the Section of the Statute involved will be determined by this court in a proceeding which will be essentially *ex parte* all to the great and irreparable injury of your petitioner.

6. And your petitioner further submits that the Bill of Complaint herein does not present a suit arising under the trademark laws of the United States or under section 4915 of the revised statutes of the United States as alleged in paragraph 2 of the Bill of Complaint and that therefore this court is without jurisdiction as to the subject matter of the alleged cause of action.

7. Wherefor- your petitioner prays that it may be made a party defendant herein and be allowed to intervene first for the purpose of filing and presenting a motion to dismiss the bill for want of jurisdiction in this court over the subject matter, and second, if the said motion shall be finally dismissed or denied, for the purpose of filing

an answer and defending the cause and for all other and further relief.

SIMPLEX ELECTRIC HEATING CO.,
By HENRY A. MORSS,
Treasurer.

NATHAN HEARD,
Of Counsel for Petitioner.

15 COUNTY OF SUFFOLK,
State of Massachusetts, ss:

Henry A. Morss, being duly sworn, deposes and says he is Treasurer of Simplex Electric Heating Company, the above-named petitioner; that he has read the foregoing petition and knows the contents thereof; that the same is true of his own knowledge except as to matters therein stated on information and belief and as to those matters he believes it to be true.

[SEAL.]

HENRY A. MORSS.

Sworn to and subscribed before me this 26th day of August 1921.

ELIZABETH G. MORRIS,
Notary Public.

Service of the foregoing petition is accepted this 27th day of August 1921. The facts therein stated relating to the action and position of the Commissioner and also as stated in paragraph 5 of the petition are admitted to be true and the granting of said petition is not opposed.

T. A. HOSTETLER,
Counsel for Commissioner of Patents.

Supreme Court of the United States, October Term, 1919.

No. 421.

AMERICAN STEEL FOUNDRIES, Petitioner,

v.

JAMES T. NEWTON, Commissioner of Patents, Respondent.

Motion by Simplex Electric Heating Company, as Real Party Respondent, to Appear, File a Brief, and Make Oral Argument.

NATHAN HEARD,
FREDERICK A. TENNANT,
Counsel for Simplex Electric Heating Company.

16 Supreme Court of the United States, October Term, 1919.

No. 421.

AMERICAN STEEL FOUNDRIES, Petitioner,

v.

JAMES T. NEWTON, Commissioner of Patents, Respondent.

To the Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Simplex Electric Heating Company, a Massachusetts corporation, respectfully moves this Honorable Court that it be allowed to appear, as the real party at interest in the above case, file a brief, and make oral argument in support of the decision of the Court of Appeals of the District of Columbia herein, upon the following grounds:

1. The respondent, James T. Newton, Commissioner of Patents, is only a formal respondent, and has no real adverse interest. The Commissioner of Patents in making the ruling sought to be reversed in this case has done so only because of, and because he was bound by, the prior decisions of the Court of Appeals of the District of Columbia construing the statute involved.

2. Simplex Electric Heating Company has the real adverse interest, and the protection heretofore afforded it by the statute involved would be destroyed should this Court reverse the construction thereof which has been given and maintained by the Court below in a long line of decisions.

3. The case now before this Court on the writ of certiorari originated in an application to the United States Patent Office for registration of the trade-mark Simplex by the petitioner, American Steel Foundries, under the provisions of section 1 of the Act of February 20, 1905. Registration was refused upon this application by the Examiner of Trade Marks and an ex parte appeal taken from this refusal to the Commissioner of Patents in person as provided by section 8 of said Act. This ex parte appeal was decided against the petitioner by the Commissioner of Patents, and thereupon an appeal was taken to the Court of Appeals of the District of Columbia in accordance with the provisions of section 9 of said

17 Act. That Court affirmed upon the ex parte appeal the refusal of the Commissioner of Patents to grant registration upon the petitioner's application.

4. The Commissioner of Patents has never found that American Steel Foundries is entitled to have its trade-mark registered under the provisions of the Act, and consequently has not caused the mark to be published in the Official Gazette of the Patent Office, and consequently no opportunity has been afforded for the Simplex Electric Heating Company to file an opposition, all as provided by section 6 of the said Act.

5. No one actively interested in opposing the contentions of the petitioner, American Steel Foundries is now before this Court. The record herein shows that no one appeared for the respondent to oppose before this Court the granting of the petition for the writ of certiorari. The Simplex Electric Heating Company received its first information of this matter after the granting of the writ through the courtesy of the Solicitor General of the United States, who called the attention of the Simplex Electric Heating Company to the action of this Court in granting the writ, and who suggested that the Simplex Electric Heating Company was more interested in the questions raised than was the Commissioner of Patents. The powers or the rights of the Commissioner of Patents will be in no way affected by the decision of this Court herein, and there is no consideration moving or obligation requiring the Solicitor General actively to oppose the contentions of the petitioners.

6. The construction of the section of the statute in question and its specific application to this particular mark Simplex and to the corporate name of Simplex Electric Heating Company has twice been determined in contested cases to which it was a party, namely, *D. H. Burrell Company v. Simplex Electric Heating Company*, 44 App. D. C. 452, and *Simplex Electric Heating Company v. Ramey Company*, 46 App. D. C. 400, by the Court of Appeals of the District of Columbia.

7. Simplex Electric Heating Company has succeeded after long and vigorously contested litigation in preventing registration of the mark Simplex in accordance with the provisions of the Trade-Mark Act as construed by the Court of Appeals of the District of Columbia. The right of the Simplex Electric Heating Company to protection of its trade-mark and its corporate name afforded by the section of the statute involved is now before this Court for final determination in a proceeding which is essentially *ex parte*. It is respectfully submitted that this is a matter of such vital interest to Simplex Electric Heating Company that the interests of justice and fair play require that this motion be granted in order that it be allowed to be heard in support of its rights and in support of the decisions of the Court below.

For the above reasons it is respectfully submitted that this motion be granted and that the Simplex Electric Heating Company be added as the real party respondent at interest before this Court, and be allowed through counsel to file a brief, and make oral argument on its behalf.

Respectfully submitted,

SIMPLEX ELECTRIC HEATING
COMPANY,

By NATHAN HEARD,
FREDERICK A. TENNANT,
Attorneys and of Counsel.

Service of the foregoing motion is accepted.

GEORGE L. WILKINSON,
Of Counsel for American Steel Foundries, Petitioner.

Service of the foregoing motion is accepted. The facts therein stated relating to the action and position of the Commissioner of Patents, and also as stated in paragraph 5 of the petition, are admitted to be true, and the granting of said motion is not opposed.

ALEX C. KING,
Solicitor General.

(Endorsed:) Filed Sep. 8, 1921. John H. R. Jamar, clerk.

19 And on, to wit, the 9th day of September, 1921, came the parties by their attorneys, and filed in the Clerk's office of said Court their certain Stipulation in words and figures following, to wit:

20 In the United States District Court, Northern District of Illinois, Eastern Division.

No. 2296.

AMERICAN STEEL FOUNDRIES, Plaintiff,

vs.

THOMAS E. ROBERTSON, Commissioner of Patents, Defendant.

Suit to Authorize Registration of Trade-mark.

Stipulation.

It is stipulated and agreed by the parties hereto that an order may be entered by the court granting the prayer of the petition to intervene filed herewith by Simplex Electric Heating Company and that the said petition may be received and filed with the same force and effect as if received and filed on September 1, 1921.

WILKINSON, HUXLEY, BYRON &
KNIGHT,

Solicitors for Plaintiff.

T. A. HOSTETLER,

*Solicitor for Commissioner of
Patents, Defendant.*

(Endorsed:) Filed Sep. 9, 1921. John H. R. Jamar, clerk.

21 And afterwards, to wit, on the 9th day of September, 1921, being one of the days of the regular September term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable George T. Page, Circuit Judge, appears the following entry, to wit:

22 In the United States District Court, Northern District of Illinois, Eastern Division.

No. 2296.

Friday, September 9, A. D. 1921.

Present: Honorable George T. Page, Circuit Judge.

AMERICAN STEEL FOUNDRIES, Plaintiff,

vs.

THOMAS E. ROBERTSON, Commissioner of Patents, Defendant.

Suit to Authorize Registration of Trade-mark.

This cause came on to be heard at this term upon the Petition of Simplex Electric Heating Company for leave to intervene and upon the stipulation of the parties agreeing to the said Petition; and thereupon, upon consideration thereof it is

Ordered, adjudged and decreed that the prayer of the Petitioner be granted, that the said Petitioner have leave to file the motion to dismiss accompanying its petition, and that if the said motion be finally dismissed or denied the Petitioner have leave to file an answer and otherwise defend the cause as a p-pty defendant.

Sept. 9, '21.

GEO. T. PAGE,
C. Judge.

23 And on, to wit, the 9th day of September, 1921, came the Defendant-Intervenor by its attorney and filed in the Clerk's office of said Court its certain Motion to Dismiss in words and figures following, to wit:

24 In the United States District Court Northern District of Illinois, Eastern Division.

No. —.

AMERICAN STEEL FOUNDRIES, Plaintiff,

vs.

THOMAS E. ROBERTSON, Commissioner of Patents, Defendant.

Suit to Authorize Registration of Trade-mark.

Motion to Dismiss.

And now comes Simplex Electric Heating Company for this purpose allowed to intervene and moves to dismiss the Bill for lack of jurisdiction in this Court over the subject matter or alleged cause of

action and on the ground that this cause is not a suit arising under the trade-mark laws of the United States, under section 9 of the act of Feb. 20, 1905, under Section 4915 of the Revised Statutes of the United States or under section 24, sub-section 7, of the Judicial Code, as alleged in paragraph 2 of the Bill of Complaint.

NATHAN HEARD,

Attorneys for Simplex Electric Company.

NATHAN HEARD,

Of Counsel.

JONES, ADDINGTON, AMES & SEIBOLD,

Solicitors.

Service accepted this 27th day of August 1921.

T. A. HOSTETLER,

Counsel for Commissioner of Patents.

(Endorsed:) Filed Sep. 9, 1921. John H. R. Jamar, Clerk.

25 And afterwards, to wit, on the sixth day of January, 1922, being one of the days of the regular December term of said Court, in the record of proceedings thereof, in said cause, before the Honorable George A. Carpenter, District Judge, appears the following entry, to wit:

26 In the United States District Court Northern District of Illinois, Eastern Division.

Friday, January 6, A. D. 1922.

Present: Honorable George A. Carpenter, District Judge.

No. 2296.

AMERICAN STEEL FOUNDRIES

vs.

THOMAS E. ROBERTSON, Commissioner of Patents, and SIMPLEX ELECTRIC HEATING COMPANY.

This cause came on to be heard at this term and was argued by counsel, and thereupon upon consideration thereof it was ordered, adjudged and decreed that the motion to dismiss the Bill of Complaint be and the same is hereby sustained and that the Bill of Complaint be and it is hereby dismissed for want of jurisdiction.

27 And on, to wit, the 4th day of February, 1922, came the plaintiff by its attorney and filed in the Clerk's office of said Court its certain Petition for Appeal in words and figures following to wit:

28 In the District Court of the United States for the Northern
District of Illinois, Eastern Division.

In Equity.

No. 2296.

AMERICAN STEEL FOUNDRIES, Plaintiff,

v.

THOMAS E. ROBERTSON, Commissioner of Patents, and SIMPLEX
ELECTRIC HEATING COMPANY, Defendants.

Petition for Appeal.

The above-named plaintiff, conceiving itself aggrieved by the order and decree made and entered in the above entitled cause on the 6th day of January, A. D. 1922, wherein and whereby it was ordered, adjudged and decreed that plaintiff's bill be dismissed for lack of jurisdiction of this Court, Does hereby appeal from the said order and decree of the 6th day of January, 1922, to the Supreme Court of the United States for the reasons specified in the Assignment of Errors filed herein; and it prays

That this appeal may be allowed and that a transcript of the record, papers and proceedings upon which said order and decree was made, duly authenticated, may be sent to the Supreme Court of the United States.

GEORGE L. WILKINSON,

Dated: February 4th, 1922.

Solicitor for Plaintiff.

[Endorsed:] Filed Feb. 4, 1922. John H. R. Jamar, Clerk.

29 And on, to wit, the 4th day of February, 1922, came the
plaintiff by its attorney and filed in the Clerk's office of said
Court its certain Assignment of Errors in words and figures follow-
ing, to wit:

30 In the District Court of the United States for the Northern
District of Illinois, Eastern Division.

In Equity. No. 2296.

AMERICAN STEEL FOUNDRIES, Plaintiff,

v.

THOMAS E. ROBERTSON, Commissioner of Patents, and SIMPLEX
ELECTRIC HEATING COMPANY, Defendants.

Assignment of Errors.

Now comes the plaintiff and files the following Assignment of
Errors upon which it will rely upon its prosecution of its appeal from

the decree made by this Honorable Court on the 6th day of January, 1922, in the above-entitled cause.

The Court erred in granting said decree for the following reasons:

1. In dismissing plaintiff's bill for lack of jurisdiction of this court over the subject-matter.

2. In not making, rendering and entering a decree in favor of the plaintiff and against the defendants, Thomas E. Robertson, Commissioner of Patents, and Simplex Electric Heating Company, and ordering the said defendants to file an answer in said cause.

31 3. In not entering a decree finding that this is a suit arising under the trade-mark laws of the United States (Section 9 of the Acts of February 20, 1905), and under Section 4915 of the Revised Statutes of the United States, and also under Section 24, Sub-section 7, of the Judicial Code, as alleged in paragraph 2 of the Bill of Complaint.

4. In not denying defendants' motion to dismiss the Bill of Complaint.

Wherefore, The said plaintiff prays that the decree of the District Court for the Northern District of Illinois, Eastern Division, ordering the dismissal herein for want of jurisdiction over the subject-matter, be reversed, and that the said District Court of the United States be ordered to enter a decree denying defendants' motion to dismiss the Bill of Complaint for want of jurisdiction of the said Court over the subject-matter.

GEORGE L. WILKINSON,
Counsel for Plaintiff-Appellant.

(Endorsed): Filed Feb. 4, 1922. John H. R. Jamar, Clerk.

31½ And afterwards, to wit, on the 4th day of February, 1922, being one of the days of the regular December term of said Court, in the record of proceedings thereof, in said, entitled cause, before the Honorable George A. Carpenter, District Judge, appears the following entry, to wit:

32 In the District Court of the United States for the Northern
District of Illinois, Eastern Division.

Thursday, February 4, A. D. 1922.

Present: Honorable George A. Carpenter, District Judge.

In Equity. No. 2296.

AMERICAN STEEL FOUNDRIES, Plaintiff,

v.

THOMAS E. ROBERTSON, Commissioner of Patents, and SIMPLEX
ELECTRIC HEATING COMPANY, Defendants.

Order.

On motion of the plaintiff, by its solicitor, it is

Ordered, That an appeal to the Supreme Court of the United States
from the final decree heretofore filed and entered herein be, and the
same is, allowed; and

That a certified transcript of the record, papers, stipulations and
all proceedings herein be forthwith transmitted to said Supreme Court
of the United States.

It is further ordered, That a bond for costs on appeal be fixed at
a sum of two hundred fifty Dollars (\$250.00).

Enter.

CARPENTER,
District Judge.

Dated: 4 Feb., 1922.

33 And on to-wit: the fourth day of February, 1922, there was
filed in the office of the Clerk of said Court a certificate of
Hon. George A. Carpenter, in words and figures as follows, to-wit:

34 In the District Court of the United States for the Northern
District of Illinois, Eastern Division.

In Equity. No. 2296.

AMERICAN STEEL FOUNDRIES, Plaintiff,

v.

THOMAS E. ROBERTSON, Commissioner of Patents, and SIMPLEX
ELECTRIC HEATING COMPANY, Defendants.

Certificate.

To the Chief Justice and the Associate Justices of the Supreme Court
of the United States:

I hereby certify, That the decree entered in the above-entitled case
on, to wit, January 6, 1922, sustaining the petition of Simplex Elec-

tric Heating Company, intervenor, and dismissing the Bill of Complaint herein, was a decree on the sole question of jurisdiction of this Court.

Enter.

CARPENTER,
Judge.

Dated: 4 Feb., 1922.

(Endorsed): Filed Feb. 4, 1922. John H. R. Jamar, Clerk.

35 And on to-wit: the 14th day of February, 1922, came American Steel Foundries, a corporation, as principal, and United States Fidelity and Guaranty Company of Maryland, as surety, and filed in the office of the Clerk of said Court a certain Bond on Appeal in words and figures as follows, to-wit:

36

Bond on Appeal.

Know all men by these presents:

That we, American Steel Foundries, a corporation, as principal, and United States Fidelity and Guarantee Company of Maryland, as surety, are held and firmly bound unto Thomas E. Robertson, Commissioner of Patents and Simplex Electric Heating Company, to the full and just sum of Two Hundred Fifty Dollars (\$250), to be paid to the said Thomas E. Robertson, Commissioner of Patents and Simplex Electric Heating Company, a corporation, its assigns and successors, to which payment well and truly to be made, we bind ourselves, our assigns and successors and severally by these presents.

Sealed with our seals and dated this 14th day of February A. D. 1922.

Whereas, lately at a session of the District Court of the United States for the Northern District of Illinois, in a suit pending in said court between American Steel Foundries, a corporation, plaintiff, and Thomas E. Robertson, Commissioner of Patents and Simplex Electric Heating Company, defendants, a decree was rendered in said matter against the said American Steel Foundries, plaintiff, and in favor of the said defendants, and the said American Steel Foundries having obtained from said court an order allowing an appeal to the Supreme Court of the United States, and filed a copy thereof in the Clerk's office of the said court, to reverse the decree of the aforesaid suit, and a citation directed to the said Thomas E. Robertson and Simplex Electric Heating Company, defendants, citing and admonishing them to be and appear at the Supreme Court of the United States to be held at the City of Washington, in the District of Columbia, within Thirty (30) days from the date of said citation.

37 Now, The Conditions of the above Obligations are such, that if the said American Steel Foundries, a corporation, shall prosecute the said appeal to effect, and answer all damages and costs, if it fail to make

good its plea, then the above obligation to be void, else to remain in full force and effect.

AMERICAN STEEL FOUNDRIES,
By G. E. SCOTT,
Vice Pres.

Attest:

[SEAL.] F. E. PATTERSON,
Secy.

UNITED STATES FIDELITY & GUARANTY
COMPANY,

[SEAL.] By CHARLES M. DALEY. [SEAL.]

(Endorsed:) Filed Feb. 14, 1922. John H. R. Jamar, Clerk.

38 In the District Court of the United States for the Northern
District of Illinois, Eastern Division.

In Equity.

No. 2296.

AMERICAN STEEL FOUNDRIES, Plaintiff,

v.

THOMAS E. ROBERTSON, Commissioner of Patents, and SIMPLEX
ELECTRIC HEATING COMPANY, Defendants.

Præcipe.

The clerk, in making up a record of the proceedings of the District Court, is requested to include the following papers in the transcript of record for forwarding to the Supreme Court:

1. Bill of Complaint.
2. Answer of Commissioner of Patents.
3. Petition of Simplex Electric Heating Company to intervene.
4. Stipulation that Court grant petition of Simplex Electric Heating Company.
5. Order, granting prayer of Simplex Electric Heating Company to intervene.
6. Motion of Simplex Electric Heating Company to dismiss bill of complaint.
7. Order dismissing bill of complaint.
8. Petition for appeal.
9. Assignment of errors.
10. Order granting appeal.

- 11 Certificate of Judge Carpenter on question of jurisdiction.
 39 12. Bond on Appeal.
 13. Citation of Appeal.
 14. Præcipe.

WILKINSON, HUXLEY, BYRON & KNIGHT,
Solicitors for Plaintiff.

Approved and Service of copy of the above acknowledged this 11th day of February, 1922.

NATHAN HEARD,
*Solicitor for Defendant Simplex
 Electric Heating Company.*

Approved and service of copy of the above acknowledged this 17th day of February, 1922.

THOMAS E. ROBERTSON,
Commissioner of Patents.

(Endorsed:) Filed Feb. 21, 1922. John H. R. Jamar, Clerk.

40 NORTHERN DISTRICT OF ILLINOIS,
Eastern Division, ss:

I, John H. R. Jamar, Clerk of the District Court of the United States for the Northern District of Illinois, do hereby certify the above and foregoing to be a true and complete transcript of the proceedings had of record made in accordance with Præcipe filed in this Court in the cause entitled American Steel Foundries vs. Thomas E. Robertson, Commissioner of Patents, as the same appear from the original records and files thereof now remaining in my custody and control.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court at my office, in the City of Chicago, in said District, this 27th day of February, A. D. 1922.

[Seal of Dist. Court U. S., Northern Dist., Illinois.]

JOHN H. R. JAMAR,
Clerk.

41 Docket Division,
Feb. 15, 1922,
U. S. Patent Office.

Mail Room,
Feb. 15, 1922,
U. S. Patent Office.

In the District Court of the United States for the Northern District
of Illinois, Eastern Division.

In Equity. No. 2296.

AMERICAN STEEL FOUNDRIES, Plaintiff,

v.

THOMAS E. ROBERTSON, Commissioner of Patents, and SIMPLEX
ELECTRIC HEATING COMPANY, Defendants.

Citation of Appeal.

UNITED STATES OF AMERICA, ss:

To Thomas E. Robertson, Commissioner of Patents, and Simplex
Electric Heating Company, Defendants:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be held at the City of Washington, in the District of Columbia, on the 6th day of March, A. D. 1922, pursuant to an order allowing an appeal filed and entered in the Clerk's office of the United States District Court for the Northern District of Illinois, Eastern Division, from a final decree signed, filed and entered in that certain suit, being in Equity No. 2296, wherein the American Steel Foundries is plaintiff and you are defendants, to show cause, if any there be, why the decree rendered against the said plaintiff, as in the said order allowing appeal mentioned, should not be corrected and speedy justice should not
42 be done to the plaintiff in that behalf.

Witness, the Honorable George A. Carpenter, United States District Judge for the second judicial circuit, this 4th day of February, in the year of our Lord One Thousand Nine Hundred and Twenty-two.

GEORGE A. CARPENTER,
District Judge.

Acknowledged service of a copy of this citation this 7th day of February, 1922.

NATHAN HEARD,
*Solicitor for Defendant-Appellee,
Simplex Electric Heating Co.*

Acknowledged service of a copy of this citation this 15th day of February, 1922.

THOMAS E. ROBERTSON,
Commissioner of Patents.

[Endorsed:] 2296. Filed Feb. 17, 1922 at — o'clock —. M
John H. R. Jamar, clerk.

Endorsed on cover: File No. 28,746, N. Illinois, D. C. U. S. Term
No. 791. American Steel Foundries, appellant, vs. Thomas E. Rob-
ertson, Commissioner of Patents, and Simplex Electric Heating
Company. Filed March 2d, 1922. File No. 28,746.

(6473)